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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1920.

No. 407.

C. A. WEED AND COMPANY, APPELLANT,

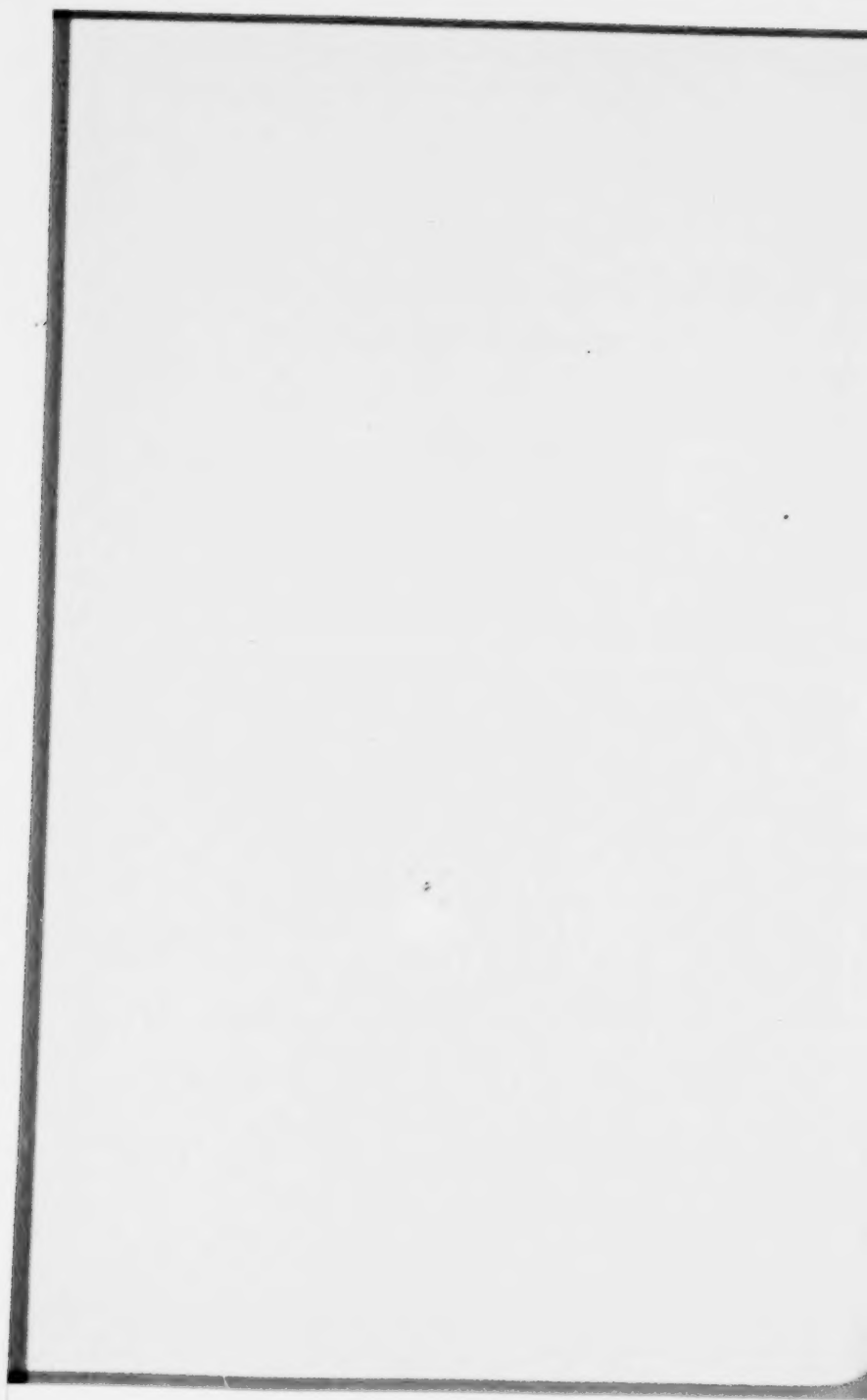
vs.

STEPHEN T. LOCKWOOD, AS UNITED STATES ATTORNEY
FOR THE WESTERN DISTRICT OF NEW YORK, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK.

MOTION ON BEHALF OF APPELLANT TO ADVANCE.

SIMON FLEISCHMANN,
EDWARD L. JELLINEK,
MARTIN CLARK, ✓
Counsel for Appellant.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1920.

No. 407.

C. A. WEED AND COMPANY, APPELLANT,

vs.

STEPHEN T. LOCKWOOD, AS UNITED STATES ATTORNEY
FOR THE WESTERN DISTRICT OF NEW YORK, APPELLEE.

APPEAL FROM FINAL DECREE OF DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK,
DISMISSING BILL OF COMPLAINT.

MOTION ON BEHALF OF APPELLANT TO ADVANCE.

Comes now the counsel on behalf of the above-named appellant and respectfully moves the advancement of the above-entitled cause for early hearing during the October, 1920, term of this court.

The appellant, dealer in wearing apparel, doing business at Buffalo, N. Y., filed in the court below a bill in equity, seeking to enjoin the appellee, as U. S. attorney, from en-

forcing against it the provisions of the act of August 10, 1917, chapter 53, section 4 (40 Stat., 277), commonly known as the Lever Act, as amended by the act of October 22, 1919, title I, section 2 (41 Stat., 298), making it unlawful for any person to exact any unjust, unreasonable, or excessive rate, charge or price for any necessary, and authorizing fine or imprisonment, or both, for violation of its terms. Wearing apparel is declared a necessary by the amendment of 1919.

The bill alleged, among other things, that an indictment had been found against appellant upon which it had not been tried, charging it with the sale of various separate articles of clothing, or other articles of wearing apparel, at prices alleged to be unjust and unreasonable, and based on the difference in the cost thereof and the price at which the same had been sold; that the appellee threatened to institute numerous further proceedings against appellant for other alleged violations of the act; that the President had issued no regulations or orders for the guidance of dealers in wearing apparel; that the enforcement of the act would deprive appellant of the benefits of recent increments in the value of stock on hand; that further proceedings against appellant would inflict upon appellant and its business and property great and irreparable damage and injury; that the said provisions of said Lever Act were unconstitutional, being so vague and indefinite as to violate the Sixth Amendment to the Federal Constitution, and also that they deprived appellant of property without due process of law, in violation of the Fifth Amendment, and that such legislation was violative of other constitutional provisions.

After the denial of a motion for a preliminary injunction by the District Court, which order was affirmed by the U. S. Circuit Court of Appeals for the Second Circuit, the District Court dismissed the bill of complaint, holding the act in question constitutional, and a final decree was entered, from

which a direct appeal was taken to the Supreme Court shortly subsequent to the adjournment of said court for the summer.

Three other appeals, viz: *U. S. vs. L. Cohen Grocery Co.*, No. 324; *Tedrow vs. A. T. Lewis & Son Dry Goods Co.*, No. 357; and *R. E. Kennington vs. Palmer*, No. 367, in which the constitutionality of said act is likewise questioned, are now pending in the Supreme Court, and have been advanced for hearing and submission on October 11, 1920, and the appellant herein deems it important, for the protection of its rights and interests, that its case be advanced for hearing at the same time as is set for the hearing of the other cases, so that the argument and points of its counsel may be before the court in determining the questions which so vitally affect it and its business.

The Federal district courts in different districts have disagreed as to the validity of the said act, some holding it constitutional, others invalid, resulting in undesirable uncertainty and confusion, and working particular hardship upon merchants such as the appellant herein, residing in districts where the act has been held valid, and it is, therefore, imperative that an early hearing should be had in this case, no less than in those which have already been advanced for early hearing.

Counsel for appellant therefore respectfully requests that the hearing of this appeal be set for October 11, 1920, or such other date as shall be set for the hearing of the said three appeals already advanced.

Buffalo, N. Y., September 14, 1920.

SIMON FLEISCHMANN,
EDWARD L. JELLINEK,
MARTIN CLARK,

Counsel for Appellant,
603 D. S. Morgan Bldg., Buffalo, N. Y.

The appellee above named hereby consents that the court advance the above-entitled case for hearing, as requested in the foregoing appeal.

WM. L. FRIERSON,
Solicitor General of the U. S.

[Endorsed:] File No. 27,764. Supreme Court U. S., October Term, 1920. Term No. 407. C. A. Weed & Company, appellant, *vs.* Stephen T. Lockwood, as U. S. attorney, etc. Motion to advance and consent thereto. Filed September 20, 1920.

(2208)

